

Ky. OAG 77-575, 1977 WL 28075 (Ky.A.G.)

***1 Office of the Attorney General
Commonwealth of Kentucky**

OAG 77-575

September 19, 1977

Mark E. Gormley, Esq.
Woodford County Attorney

Dear Mr. Gormley:

This is in reply to your letter raising several questions concerning a fire protection district and the board of trustees of a fire protection district.

[KRS 75.031\(1\)](#) provides in part that the affairs of a fire protection district shall be conducted by the board of trustees consisting of seven members, four of whom are elected and three of whom are appointed by the county judge. Two members of the board of trustees shall be elected by the members of the volunteer fire fighters of the district. In connection with the board members with whom you are concerned, the statute provides that "Two (2) members of the board of trustees shall be property owners who own and reside in the property in the district who are not active volunteer fire fighters and shall be elected by such property owners."

The Woodford County Fire Protection District includes all of Woodford County with the exception of the areas covered by the cities of Versailles and Midway. One of the elected trustees owned his residence and lived in the county. He subsequently sold his property and purchased a home within the city limits of Versailles. He has about one and one-half years of his term remaining.

You ask whether this trustee can continue to serve until his term expires as there is no automatic vacation of the office. If he can serve out his term you also ask whether he can run again while maintaining his residence in Versailles.

The trustee to whom you refer is required by [KRS 75.031 \(1\)](#) to be a property owner who owns and resides in the property in the district. If he has sold his property in the district and moved out of the fire protection district, he no longer possesses the statutory qualifications of the office and is subject to removal. However, until the disqualified trustee either resigns or is removed from his position as a member of the board of trustees, he serves as a de facto officer and his acts, if otherwise authorized and permissible, are considered valid. See [Commonwealth Ex Rel. Breckinridge v. Winstead, Ky., 430 S.W.2d 647 \(1968\)](#) and OAG's 76-381 and 75-722, copies enclosed.

[KRS 75.031\(1\)](#) also provides that in the event of a vacancy in the term of an elected trustee, the remaining elected trustees shall elect a trustee to fill the vacancy for the balance of the term. Furthermore, on the expiration of the respective terms of the elected trustees, the successor to each shall have the same qualifications as his prede-

cessor. Thus, not only must the trustees comprising the original board possess the statutory qualifications but their successors must possess the same qualifications.

Your next question concerns the other elected trustee who is not an active volunteer fire fighter. He owns a farm in the county with a residence thereon but for the last several years he has lived in Versailles. You ask whether he can continue to serve as a trustee and whether he can seek reelection.

*2 The above-mentioned trustee is also subject to the provisions of [KRS 75.031\(1\)](#) requiring that he be a property owner who owns and resides in the property in the district. The question to be resolved is whether the trustee is a resident of the district.

Legal residence is sometimes difficult to determine but it is based primarily upon intent and factual evidence as held in the case of [Nunn v. Hamilton](#), 233 Ky. 663, 26 S.W.2d 526 (1930). Legal residency usually refers to permanent residency rather than temporary residency. If a consideration of all of the applicable facts indicates that the trustee in question is not a legal resident of the fire protection district, he is disqualified under the provisions of [KRS 75.031\(1\)](#) and subject to removal from office. See OAG 74.536, copy enclosed, dealing with legal residency.

Your last question concerns [KRS 75.031\(2\)](#) providing in part that, "The polls shall be located at the principal fire house in the district." The fire district maintains several fire houses throughout the county but Station No. 1 near Versailles appears to be the principal fire house. You ask whether the statute requires an election in only one polling place or whether polling booths may be set up in the smaller fire houses.

In view of the use of the words "principal fire house" (singular) in the statute we can only conclude that the intent is to require that the elections for trustees be held at only the principal fire house and not at the smaller fire houses in the district.

Very truly yours,
Robert F. Stephens
Attorney General

By: Thomas R. Emerson
Assistant Attorney General

Ky. OAG 77-575, 1977 WL 28075 (Ky.A.G.)
END OF DOCUMENT